IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

WP(C).No. 23247 of 2006(P)

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CMP.270/2005 of J.M.F.C.-I, KANNUR

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PETITIONER:

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P.K.MANOHARAN,
S/O.P.V.BALAKRISHNAN NAIR,
RAJESWARI BHAVAN, AZHEEKKODE, KANNUR.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS:

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1. P.K.KRISHNAKUMARI,
D/O.P.V.BALAKRISHNAN NAIR,
12A, CANTONMENT, NEAR GOVERNMENT GUEST HOUSE,
KANNUR.

2. STATE OF KERALA,
REP. BY STATE PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.VINOD BHAT
GOVERNMENT PLEADER SRI.C.K.SURESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE JFCM I KANNUR.

EXT.P2:TRUE COPY OF THE JUDGMENT IN WRIT PETITION NO.6919/06 DT.31.3.06.

EXT.P3:TRUE COPY OF THE COMPLAINT FILED BY THE 1ST RESPONDENT BEFORE THE JFCM I, KANNUR.

/TRUE COPY/

**R.BASANT, J**

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**W.P(C).No.23247 of 2006**

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Dated this the 16th day of January, 2007

**JUDGMENT**

The petitioner is the complainant in a prosecution under Section 138 of the N.I Act. The 1st respondent is the accused. Signature in the cheque is disputed. After the filing of the complaint under Section 138 of the N.I Act, the 1st respondent had filed a complaint before the learned Magistrate alleging forgery committed of the signature in the cheque. That complaint was forwarded to the police under Section 156(3) Cr.P.C. Police is conducting investigation into that crime. While so, the respondent had come to this Court and had prayed for a direction that the original of the cheque which was available in Section 138 proceedings before the learned Magistrate may be forwarded to the handwriting expert of the Forensic Science Laboratory. A copy of the order passed by this Court is produced as Ext.P2. This Court had directed that the original of the cheque be forwarded to the handwriting expert of the Forensic Science Laboratory. That order was passed without notice to the petitioner herein. The petitioner submits that he was unaware of the proceedings initiated before this Court, which led to the order-Ext.P2.

2. The learned Magistrate had subsequently forwarded the original cheque to the handwriting expert. That document was sent to

the handwriting expert along with certain specimen/standard signatures of the respondent. The present grievance of the petitioner is that such specimen signatures were taken at his back. He apprehends that those signatures which are sent may not really be the specimen signatures. He makes only a short request before this Court. He prays that the learned Magistrate may be directed to take specimen signatures of the respondent in the presence of the petitioner also and forward those specimen signatures also to the expert immediately for comparison reckoning the same also as specimen signatures.

3. Called upon to explain the nature of the objection if any of the respondent, the learned counsel for the respondent submits that except that this procedure may result in unnecessary protraction, the respondent has no objection against such course. It is not really necessary to follow such course as the specimen signature of the petitioner has already been forwarded to the handwriting expert, submits counsel.

4. Having considered all the relevant inputs, I am satisfied that the interests of justice will be best served by directing the learned Magistrate to take the specimen signatures of the respondent herein in the presence of the Magistrate after notice to the petitioner herein also and to forward the same also to the handwriting expert of

the Forensic Science laboratory immediately. Such course, I am of opinion, is not likely to prejudice the interests of any one in any way and shall cater eminently to the interests of justice.

5. This Writ Petition is, in these circumstances, allowed. The petitioner and the respondent are both directed to appear before the learned Magistrate on 25.01.2007. The learned Magistrate shall obtain the specimen signatures of the respondent in accordance with law and forward the same immediately to the Forensic Science Laboratory requesting the expert to reckon such signatures also as specimen signatures of the respondent and to give his opinion.

6. Hand over a copy of this order to the learned counsel for the petitioner for production before the learned Magistrate. Both parties shall appear before the learned Magistrate without any further directions on 25.01.2007.

**(R.BASANT, JUDGE)**

rtr/-